

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST
FOR REVIEW BY:

MAREENA ITTEERA,

Petitioner.

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CHARGE NO.: 2009CF3159
EEOC NO.: 21BA91688
ALS NO.: 10-0013

ORDER

This matter coming before the Commission by a panel of three, Commissioners Munir Muhammad, Diane M. Viverito, and Nabi Fakroddin presiding, upon Mareena Itteera's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2009CF3159; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that:

- (1) The Respondent's dismissal of the Petitioner's charge is **VACATED**, and the charge is **REINSTATED** and **REMANDED** to the Respondent for **FURTHER INVESTIGATION** as herein instructed.

In support of which determination the Commission states the following findings of fact and reasons:

1. On April 2, 2009, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged her employer John H. Stroger, Jr. Hospital of Cook County ("Employer") failed to promote her because of her national origin, India, in violation of Section 2-102(A) of the Illinois Human Rights Act (the "Act"). On December 21, 2009, the Respondent dismissed the Petitioner's charge for Lack of Jurisdiction. On January 6, 2010, the Petitioner timely filed her Request.
2. On June 16, 2008, the Petitioner applied with the Employer for a promotion to the position of Charge Nurse II ("CN II"). The Employer interviewed the Petitioner for the position on August 13, 2008. The Employer also interviewed three (3) other applicants for the CN II position in August 2008.

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

3. On August 25, 2008, the Employer hired one of the other three (3) applicants for the CN II position.
4. The Petitioner alleged in her charge that she was denied a promotion to the CN II position on March 23, 2009. In her Request, the Petitioner contends that the Employer never officially announced whom it had promoted to the CN II position, and that the Employer intentionally kept this information secret. Further, in the course of the brief investigation conducted by the Respondent, the Petitioner stated she was unsure of when the position was filled. The Petitioner stated that on March 23, 2009, the Petitioner noticed that one of the other applicants for the CN II position had a "CN II" designation next to her name.
5. The Respondent dismissed the Petitioner's charge for lack of jurisdiction based on its determination that the Petitioner had not filed her charge within 180 days of the alleged civil rights violation, as required by 7A-102(A)(1) of the Act. See 775 ILCS 5/7A-102(A)(1) (West 2010). Specifically, the Respondent determined the alleged violation occurred on August 25, 2008, when the Employer selected the employee for the CN II position. The Respondent determined that the Petitioner's charge, filed on April 2, 2009, was filed 220 days after the alleged violation occurred.
6. In its Response to the Petitioner's Request, the Respondent asserts that it lacks jurisdiction to investigate the Petitioner's charge because the charge was untimely filed.

CONCLUSION

The Commission concludes that the dismissal of the Petitioner's charge must be vacated and remanded to the Respondent for further investigation.

The Respondent is indeed correct that the 180-day filing time is jurisdictional; if a charge is not timely filed, then the Respondent lacks jurisdiction to investigate the merits of the charge. See Pickering v. Illinois Human Rights Commission, 146 Ill. App.3d 340, 496 N.E 2d 746 (1986). However, in this case, the Commission disagrees with the Respondent's determination of when the 180-day clock began to run.

The Commission has previously held that "the 180 day period begins to run from the time that the adverse action is communicated to the Complainant." See Fletcher Barnes and Chicago Transit Authority, 36 Ill. HRC Rep. 211, 2 (1987). In other words ... "the 180-day period begins when the employer gives notice of the discriminatory action, which is when the injury is deemed to have occurred." See Jesse Lofton and Brown & Williamson Tobacco Corp., IHRC, ALS No. 4306, June 29, 1992, 1992 WL 721759, * 5.

Further, communication of the alleged discriminatory action does not have to be a formal communication. "If events transpire which in fairness and logic would alert an average layperson that

discrimination is occurring, the Complainant must file a charge with respect to that discrimination during the limitations period.” See Elliott v. Sperry-Rand Corp., 79 F.R.D. 580 (D. Mn. 1978), *cited in Barnes*, at 3.

Therefore, in order to determine whether or not the Petitioner's charge was timely filed, the Respondent shall conduct further investigation to determine the date the Employer communicated its choice for the CN II position to the Petitioner. The date of communication of the alleged discriminatory action to the Petitioner shall constitute the date of the alleged civil rights violation. Then, the Respondent shall determine if the Petitioner filed her charge within 180 days thereafter.

If the Petitioner filed her charge within 180 days after the Employer communicated its choice for the CN II position to her, the charge is timely and the Respondent shall proceed to investigate the merits of the Petitioner's charge and make a determination. However, if the Petitioner's charge was not filed within 180 days after the Employer communicated its choice for the CN II position to the Petitioner, then the Respondent shall lack jurisdiction to investigate the Petitioner's charge.

THEREFORE, IT IS HEREBY ORDERED THAT

- (1) The Respondent's dismissal of the Petitioner's charge is **VACATED**, and the charge is **REINSTATED** and **REMANDED** to the Respondent for **FURTHER INVESTIGATION** as herein instructed.

This Order is not yet final and appealable.

STATE OF ILLINOIS)
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 HUMAN RIGHTS COMMISSION)

Entered this 14th day of July 2010.

Commissioner Munir Muhammad

Commissioner Diane Viverito

Commissioner Nabi Fakroddin